

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re:	:	
	:	
Gwendolyn Rose AKA Gwendolyn	:	Case No.: 16-32817
Shiree Rose, AKA Gwendolyn S Rose	:	Chapter 7
	:	Judge Lawrence S. Walter
Debtor.	:	*****
	:	
	:	

**MOTION OF WELLS FARGO BANK, NA FOR RELIEF FROM STAY ON FIRST
MORTGAGE FOR REAL PROPERTY LOCATED AT 601 DAYTONIA AVENUE,
FAIRBORN, OH 45324**

Wells Fargo Bank, NA (the "Creditor") moves this Court, under §§ 361, 362, 363 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rules 4001 and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an Order conditioning, modifying or dissolving the automatic stay imposed by § 362 of the Bankruptcy Code. In support of this Motion, the Creditor states:

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. § 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.
2. On April 23, 2009, Gwendolyn Rose AKA Gwendolyn Shiree Rose, AKA Gwendolyn S Rose ("Debtor") obtained a loan from Creditor, Wells Fargo Bank, N.A., in the amount of \$77,266.00. Such loan was evidenced by a Promissory Note dated April 23, 2009 (the "Note"), a copy of which is attached as Exhibit A.

3. To secure payment of the Note and performance of the other terms contained in it, the Debtor executed a Mortgage dated April 23, 2009 (the "Mortgage"). The Mortgage granted a lien on the real property (the "Property") owned by Debtor, located at 601 Daytonia Avenue, Fairborn, OH 45324 and more fully described in the Mortgage. Gwendolyn S. Miller acquired title to the Property by virtue of a deed from Jack L. Owsley, Jr. and Pamela Y. Owsley, Husband and Wife, dated September 25, 1992, filed October 1, 1992, recorded at Official Instrument Number 21675, Recorder's Office, Greene County, OH. A copy of said Deed is attached as Exhibit B.
4. The lien created by the Mortgage was duly perfected by the filing of the Mortgage in the office of the Greene County Recorder on May 7, 2009. A copy of the Mortgage is attached as Exhibit C. The lien is the first lien on the property.
5. The Note was transferred as follows:
 - a. from Wells Fargo Bank N.A. to _____. The transfer is evidenced by the indorsement attached to this Motion as Exhibit A. Because the endorsement is in blank and Creditor is in possession of the original Note, Creditor is entitled to enforce the instrument.
6. The Mortgage was not transferred.
7. The value of the Property is \$57,150.00. This valuation is based on Greene County Auditor which is attached as Exhibit D.
8. As of September 15, 2016, there is currently due and owing on the Note the principal balance of \$68,822.44, plus interest accruing thereon at the rate of 5.000% per annum from October 1, 2015.
9. Other parties known to have an interest in the Property are as follows:
 - a. the Greene County Treasurer;

10. The balance on Creditor's first mortgage exceeds the value of the Property. Based upon the lack of equity in the Property, Creditor asserts that the Property is burdensome and/or of inconsequential value and benefit to the estate.
11. The Creditor is entitled to relief from the automatic stay under 11 U.S.C. § 362(d)(1) and/or 362(d)(2) for these reason(s):
 - a. Debtor has failed to provide adequate protection for the lien held by the Creditor for the reasons set forth below.
 - b. Debtor has failed to make periodic payments or had made partial payments to Creditor for the months of November 2015 through September 2016 which unpaid payments less any funds being held in suspense are in the aggregate amount of \$6,748.39. The total provided in this paragraph cannot be relied upon as a reinstatement quotation.
 - c. Debtor intends to surrender the Property located at 601 Daytonia Avenue, Fairborn, OH 45324 according to the Statement of Intent filed.
12. Creditor has completed the worksheet attached as Exhibit E.
13. This Motion does not seek to affect the rights of the Chapter 7 Trustee.

WHEREFORE, Creditor prays for an Order from the Court granting Creditor relief from the automatic stay of 11 U.S.C. § 362 of the Bankruptcy Code to permit Creditor to proceed under law and for such other and further relief to which the Creditor may be entitled.

Respectfully submitted,

/s/ John R. Cummins

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Attorneys for Creditor

The case attorney for this file is John R.
Cummins.
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NOTICE OF MOTION

Wells Fargo Bank, NA has filed papers with the court to obtain relief from stay.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion**, you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to:

Clerk of the United States Bankruptcy Court
Old Post Office
120 West Third Street
Dayton, OH 45402

OR your attorney must file a response using the court's ECF system.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to

Manley Deas Kochalski LLC
Attention: John R. Cummins
P.O. Box 165028
Columbus, OH 43216-5028

Office of U.S. Trustee, Southern District of
Ohio, Party of Interest, 170 North High
Street, #200, Columbus, OH 43215

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Gwendolyn Rose AKA Gwendolyn Shiree
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554 Daytonia Avenue
Fairborn, OH 45324

Greene County Treasurer
15 Greene Street
P.O. Box 427
Xenia, OH 45385

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief without further hearing or notice.

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2016, a copy of the foregoing Motion for Relief from Stay on First Mortgage for Real Property Located at 601 Daytonia Avenue, Fairborn, OH 45324 was served on the following registered ECF participants, **electronically** through the court's ECF System at the email address registered with the court:

Office of U.S. Trustee, Southern District of Ohio, Party of Interest, 170 North High Street, #200, Columbus, OH 43215

Paul Spaeth, 7925 Paragon Road, Suite 101, Dayton, OH 45459

Eric A. Stamps, Attorney for Gwendolyn Rose AKA Gwendolyn Shiree Rose, AKA Gwendolyn S Rose, Stamps & Stamps, 3814 Little York Road, Dayton, OH 45414, stampslaweric@hotmail.com

and on the below listed parties by regular U.S. mail, postage prepaid:

Gwendolyn Rose AKA Gwendolyn Shiree Rose, AKA Gwendolyn S Rose, 554 Daytonia Avenue, Fairborn, OH 45324

Gwendolyn Rose AKA Gwendolyn Shiree Rose, AKA Gwendolyn S Rose, 601 Daytonia Avenue, Fairborn, OH 45324

Greene County Treasurer, 15 Greene Street, P.O. Box 427, Xenia, OH 45385

/s/ John R. Cummins
